

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HEIDE KURTZ, solely in her capacity
as Chapter 7 Trustee for the Estate of
NAMCO FINANCIAL EXCHANGE
CORP.,

Plaintiff,

v.

LIBERTY MUTUAL INSURANCE
COMPANY, a Massachusetts
Corporation, ZURICH AMERICAN
INSURANCE COMPANY, a New York
Corporation; AXIS INSURANCE
COMPANY, an Illinois Corporation;
TWIN CITY FIRE INSURANCE
COMPANY, a Minnesota Corporation,
and DOES 1-100, inclusive,

Defendants.

Case No. CV 11-07010 DMG (JCGx)

Hon. Dolly M. Gee
Courtroom 7

~~PROPOSED~~ PROTECTIVE
ORDER

Discovery Cutoff: 01/29/13
Motion Cutoff: 02/05/13
Trial Date: 06/04/13

Plaintiffs Heide Kurtz, solely in her capacity as Chapter 7 Trustee for the
Estate of NAMCO Financial Exchange Corp. and defendants Liberty Mutual
Insurance Company Mutual Insurance Company, Zurich American Insurance
Company, AXIS Insurance Company and Twin City Fire Insurance Company (the
“Parties”) submit the following proposed protective order in connection with

1 discovery proceedings in the above-captioned matter and pursuant to their
 2 Stipulation for Protective Order filed September 26, 2012.

3 1. Any party in the lawsuit styled *Heide Kurtz, solely in her capacity as*
 4 *Chapter 7 Trustee for the Estate of NAMCO Financial Exchange Corp. v. Liberty*
 5 *Mutual Insurance Company*, Zurich American Insurance Company, AXIS
 6 Insurance Company, Twin City Fire Insurance Company, United States District
 7 Court for the Central District of California Case No. CV 11-07010 DMG (JCGx)
 8 (the “Case”), may, by written notice, or by a statement on the record at a
 9 deposition, designate any material that the party in good faith believes to be
 10 confidential, privileged, private, commercial, financial information, or “trade
 11 secrets” as defined in California Civil Code section 3426.1¹ and incorporated
 12 herein by this reference, not previously made available to the public or the
 13 receiving party, as “Confidential” under the terms of this Protective Order.

14 2. The provisions of this Protective Order shall apply with the same
 15 force and effect to any non-party in this Case who provides testimony, documents,
 16 or information in such discovery proceedings and to any party in the Case who will
 17 receive such testimony, documents or information in the Case. Such non-parties
 18 may intervene in this Case to enforce the provisions of this Protective Order as if
 19 they were a party to the Case. References to a “party” or “parties” herein shall also
 20 include such non-parties who provide testimony, documents, or information in this
 21 Case.

22 3. Documents that contain non-public information may be designated as
 23 “Confidential” in the manner described below for materials concerning the
 24 producing party’s trade secrets (as that term is define in California Civil Code
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26 ¹ Cal. Civil Code §3426.1 provides that trade secret “means information, including a formula,
 27 pattern, compilation, program, device, method, technique, or process, that: (1) Derives
 28 independent economic value, actual or potential, from not being generally known to the public or
 to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject
 of efforts that are reasonable under the circumstances to maintain its secrecy.”

1 section 3426.1) or other proprietary or confidential financial, operational, research
 2 and development or commercially sensitive information, information that
 3 implicates privacy rights, or information as to which the producing party otherwise
 4 has a business or legal need for confidentiality. The documents which may be
 5 designated as "Confidential" contain the following categories of information that
 6 the Parties have thus far identified as potentially requiring protection under this
 7 Protective Order:

- 8 • confidential or financial information of third parties;
- 9 • trade secret or other proprietary information regarding underwriting of
- 10 the policies;
- 11 • attorney fee billing invoices;
- 12 • claims handling manuals, procedures, guides and training materials;
- 13 • underwriting manuals, procedures, guides and training materials;
- 14 • other information of non-parties, such as claim information or other
- 15 personal, confidential information;
- 16 • attorney-client or work product information;
- 17 • reinsurance information;
- 18 • reserve information.

19 4. The foregoing categories of information may be found in any of the
 20 following types of documents, all of which may be designated as "Confidential"
 21 under this Protective Order, as appropriate:

- 22 (a) exhibits, answers to interrogatories, responses to requests for
- 23 admissions and deposition transcriptions and all original
- 24 written, recorded, graphic or electronic matters (and all
- 25 identical and non-identical copies thereof);
- 26 (b) any copies, notes, abstracts or summaries of such information,
- 27 and the information itself; or
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1 (c) any pleading, affidavit, declaration, brief, motion, transcript or
2 other writing containing such information.

3 5. Notwithstanding anything to the contrary in this Order, a producing
4 party may designate as "Confidential" any information or documents previously
5 transmitted or disclosed pursuant to a written agreement or understanding
6 regarding the confidentiality of such information or documents, or which is/are
7 protected as confidential or privileged by statute, rule, or regulation. Further,
8 notwithstanding anything to the contrary in this Order, any and all billing invoices
9 or related documents reflecting services performed by or on behalf of counsel may
10 be designated as "Confidential," regardless of when or under what circumstances
11 the documents were disclosed.

12 6. Only non-public documents and documents not previously in the
13 possession of the receiving party may be designated as "Confidential."
14 Accordingly, "Confidential" materials shall not include any documents concerning
15 information that at any time has been: (a) produced, disclosed or made available to
16 the receiving party, the public or otherwise available for public access; or (b)
17 disclosed in connection with any governmental public filing which could not
18 reasonably be assumed to be or have been intended to be kept confidential. Any
19 document concerning information that has not been preserved or maintained in a
20 manner calculated to preserve its confidentiality shall not be designated as
21 "Confidential."

22 7. Any documents, material or information to be designated
23 "Confidential" pursuant to this Order may be so designated by stamping or
24 otherwise affixing on the documents, material or information the legend
25 **"CONFIDENTIAL: NAMCO v. Liberty Mutual, et al., USDC Case No. CV 11-**
26 **07010"** (the "required legend") prior to their production. Documents or things
27 which cannot be reasonably labeled pursuant to this paragraph should be so
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1 designated by the Producing Party by informing the receiving party in writing.
2 Confidential information consisting of a multi-page document must contain the
3 required legend on every page designated as confidential. In the case of a
4 deposition transcript, transcript of a court or other related proceeding, an
5 admission, interrogatory answer, or other discovery response, the required legend
6 shall be stamped or affixed immediately preceding the portion of such matter as is
7 being designated confidential.

8 8. If material originally produced without the required legend is
9 subsequently designated as confidential by any party, including the party who
10 originally produced the material, the designating party shall provide all parties with
11 a copy of that material bearing the required legend. Upon receipt of the copy of
12 the material bearing the legend, the receiving party shall either: (a) affix the
13 required legend to each page of the previously non-legended copies in its
14 possession; or (b) destroy all non-legended copies in its possession.

15 9. Nothing herein shall require defendants to destroy or alter documents,
16 whether in electronic or hardcopy format, in their claim files, underwriting files, or
17 other files or records they maintain and/or are required to maintain in the course of
18 business.

19 10. In the event that a party designates all or a portion of a deposition
20 transcript as confidential after the transcript has been produced to all parties by the
21 reporting service, each party in possession of a copy of the transcript not
22 previously marked as confidential shall, upon notice of a confidential designation,
23 annex to the deposition a copy of any such notice of designation.

24 11. In the event counsel for the party receiving documents, material, or
25 information designated as "Confidential" (the "receiving party") objects to such
26 designation of any or all of such items, counsel shall within a reasonable time after
27 receipt, advise the party producing the items (the "producing party") of such
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1 objections and the reasons therefore. All of the items shall be treated as
 2 “Confidential” pending a resolution of the parties’ dispute. It shall be the burden
 3 of the producing party to demonstrate to the Court’s satisfaction the propriety of
 4 the “Confidential” designation.

5 12. If any party wishes to use or inquire at any deposition concerning
 6 documents, material, or information designated as “Confidential” the portion of the
 7 deposition transcript that relates to such documents, material, or information shall
 8 be designated and treated as “Confidential” and subject to this Order. Further, any
 9 party may designate any additional portion of deposition testimony in this Case
 10 “Confidential” no later than fifteen (30) days after receipt of the deposition
 11 transcript, subject to the provisions of paragraphs 5 and 6, above.

12 13. Documents or material (including portions of deposition transcripts)
 13 designated as “Confidential” or information derived solely therefrom, may only be
 14 disclosed or made available by the party receiving such information to “Qualified
 15 Persons,” who, in the case of documents, material or information designated as
 16 “Confidential” are defined to consist solely of:

- 17 (a) The Court and any trier or finder of fact, such as the members
 18 of a jury impaneled in this action (at any trial or oral hearing
 19 and in the manner provided by paragraph 15 hereof);
- 20 (b) Counsel (including “in-house” counsel) for the parties in this
 21 Case and the paralegal, clerical (including data entry and IT
 22 personnel) and secretarial staff employed by such counsel;
- 23 (c) Court reporters, videographers or similar personnel;
- 24 (d) Any party’s witness during the course of that witness’
 25 deposition or testimony in court;
- 26 (e) Experts and/or advisors consulted by the parties or their counsel
 27 in connection with this Case, whether or not retained to testify
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1 at trial; provided that prior to any such disclosure counsel for
 2 the party making the disclosure shall deliver a copy of this
 3 Protective Order to the expert and/or advisor, shall explain its
 4 terms to the expert and/or advisor, and shall secure the
 5 signature of the expert and/or advisor on a letter in the form
 6 attached hereto as Exhibit A;

7 (f) Corporate representatives selected by the corporate parties to
 8 this litigation;

9 (g) Reinsurers and auditors; and

10 (h) Any other person as to whom the producing party agrees in
 11 writing prior to disclosure.

12 14. Documents and materials designated as “Confidential” and
 13 information derived solely therefrom shall be used by the parties and their counsel
 14 only for the purposes of preparing for and acting in this Case. Documents and
 15 materials designated as “Confidential” and information derived solely therefrom
 16 shall not be used by the parties or their counsel except as expressly permitted
 17 herein. Moreover, any document containing summary or recitation of any part of
 18 the content of a “Confidential” document or of confidential information also shall
 19 be deemed to be a “Confidential” document and have the required legend affixed
 20 to it, and subject to all of the protections and restrictions in this Protective Order.

21 15. No copies shall be made of any “Confidential” document except as
 22 deemed reasonably necessary in this Case. Any and all “Confidential” documents
 23 shall be kept in secure, segregated facilities and access to those facilities shall be
 24 permitted only to Qualified Persons. Counsel for each party shall take such steps
 25 as they reasonably believe are appropriate to advise those persons employed or
 26 retained in clerical, stenographic or ministerial functions of the restrictions upon
 27 dissemination of “Confidential” documents provided by this Protective Order.
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1 16. Nothing herein shall impose any restrictions on the use or disclosure
2 by a party or witness of documents or information obtained lawfully by such party
3 or witness independently of the discovery proceedings in this Case, or from a
4 source independent of the producing party, whether or not such documents or
5 information are also obtained from the producing party through discovery in this
6 Case, except as stated in paragraph 4 above.

7 17. Nothing contained herein shall constitute a waiver of or otherwise
8 restrict a party's right to propound discovery or object to discovery of or use of any
9 documents or information in this Case. Nothing contained herein shall constitute a
10 waiver by a receiving party of the right to object to the designation of documents,
11 materials, or information as "Confidential."

12 18. A Party that seeks to file under seal any documents and material
13 designated as "Confidential" must comply with Civil Local Rule 79-5 and this
14 Court's Standing Orders. In lieu of this procedure, the designating and filing
15 parties may agree to file a redacted version of the documents or material
16 designated as "Confidential".

17 19. All Court orders will be presumptively available to the public.
18 Therefore, if a party files any evidence, motion or other papers under seal pursuant
19 to this Protective Order, all papers that refer to or rely upon such evidence shall
20 designate the particular aspects that are confidential. By so designating, the parties
21 will enable the Court, in drafting orders, to determine whether there is evidence
22 which the Court should attempt not to disclose. Absent such advance notification,
23 the Court will be free to incorporate all such evidence in its written and oral
24 rulings.

25 20. If any party wishes to use documents and materials designated as
26 "Confidential" at Trial, any such documents and materials that were designated as
27 "Confidential" and/or kept and maintained pursuant to the terms of this Protective
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1 Order will become public and will be presumptively available to all members of
2 the public, including the press, unless sufficient cause is shown in advance of trial
3 to proceed otherwise.

4 21. Each non-lawyer given access to documents, material or information
5 designated "Confidential" pursuant to the terms hereof shall be advised that the
6 documents, material, or information are being disclosed pursuant to and subject to
7 the terms of this Protective Order and may not be disclosed other than pursuant to
8 the terms hereof.

9 22. Complying with the terms of this Protective Order shall not:

- 10 (a) operate as an admission by any party that any particular
11 documents, material, or information contain or reflect currently
12 valuable proprietary or commercial information; or
13 (b) prejudice in any way the right of a party at any time;
14 (i) to seek a determination by the Court of whether any
15 particular documents, item of material, or piece of
16 information should be subject to the terms of this
17 Protective Order;
18 (ii) to seek modifications of this Protective Order;
19 (iii) to present a motion to the Court for a separate protective
20 order as to any particular document or information,
21 including restrictions differing from those as specified
22 herein; or
23 (iv) to seek relief on appropriate notice from any provision(s)
24 of this Protective Order, either generally or as to any
25 particular documents, item of material, or piece of
26 information.
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1 23. Upon termination of the above-captioned Case (i.e., after final
2 judgment is entered and all appeal periods have expired or appeals been finally
3 decided, or after final resolution of the Case by settlement), or at any time
4 thereafter, the party who produced or designated information or documents
5 “Confidential” may request the destruction, or return to counsel for the producing
6 or designating party, of all documents and/or material designated as “Confidential”
7 and all copies thereof. The receiving party shall make all reasonable efforts to
8 ensure that it has retrieved all material subject to the request and has destroyed or
9 returned (as requested) all such materials, except that outside counsel for each
10 party may maintain in its files pleadings, briefs, and other documents filed with the
11 Court and official deposition transcripts and exhibits, as well as any work-product
12 or attorney-client privileged communications regarding such documents and/or
13 information, and such documentation required to be maintained by corporate
14 guidelines and/or applicable law, provided that all such documents and/or
15 information will otherwise remain subject to the terms of this Protective Order.
16 The prohibitions of this Protective Order which restrict the disclosure and use of
17 “Confidential” materials shall continue to be binding upon a party and the party’s
18 outside counsel to the extent that the party (and/or the party’s outside counsel)
19 retains any such “Confidential” documents or materials and and/or copies thereof.
20 The Court shall retain jurisdiction following the resolution of the Case to enforce
21 the terms of this Protective Order.

22 24. All documents, material, and information designated as
23 “Confidential” may only be used by the parties to this Case, and Qualified Persons,
24 subject to the rights of any party to raise any other objections to the use of such
25 discovery material.

26 25. Disclosure (including production) of information that a Party or non-
27 party later claims should not have been disclosed because of a privilege, including,
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1 but not limited to, the attorney-client privilege or work product doctrine
2 (“Privileged Information”), shall not automatically constitute a waiver of, or
3 estoppel as to, any claim of attorney-client privilege, attorney work-product, or
4 other ground for withholding production as to which the Producing Party would be
5 entitled in the litigation or any other federal or state proceeding. This Order is
6 intended to provide the full protection afforded by Federal Rule of Evidence
7 502(d), providing that “A Federal court may order that the privilege or protection
8 is not waived by disclosure connected with the litigation pending before the
9 court—in which even the disclosure also is not a waiver in any other Federal or
10 State proceeding.” Upon discovery by a Producing Party (or upon receipt of notice
11 from another Party) that he/she/it may have produced Privileged Information, the
12 Producing Party shall, within ten (10) days of such discovery, request the return of
13 such information in writing by identifying the Privileged Information and stating
14 the basis for withholding such information from production. After being notified,
15 all other Parties must return, sequester, or destroy the Privileged Information and
16 any copies he/she/it has; must not use or disclose the information until the claim is
17 resolved; and must take reasonable steps to retrieve the information if he/she/it
18 disclosed the Privileged Information before being notified. If any Party disputes
19 the privilege claim (“Objecting Party”), that Objecting Party shall notify the
20 Producing Party of the dispute and the basis therefore in writing within ten (10)
21 days of receipt of the request for the return of the Privileged Information. Except
22 as expressly set forth herein, nothing in this provision shall limit the bases on
23 which the Objecting Party may challenge the assertion of any privilege or
24 protection by the Producing Party. The parties shall thereafter meet and confer in
25 good faith regarding the disputed claim within ten (10) days. In the event that the
26 Parties do not resolve their dispute, either Party may bring a motion for
27 determination of whether a privilege applies. The Producing Party must preserve
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1 the information until the claim is resolved. If the claim of privilege is not disputed
2 or resolved in favor of the Objecting Party, then all other Parties will return or
3 destroy the privileged document.

4 26. The Court is not bound by the terms of this Protective Order, and this
5 Protective Order may be modified by subsequent Order of the Court, and the
6 parties may seek such modification.

7 27. This Court shall retain jurisdiction over all persons subject to this
8 Protective Order for the purposes of enforcing this Protective Order.

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10 IT IS SO ORDERED.

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12 Dated: September 28, 2012

UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF
CALIFORNIA

13
14
15 By: _____

Hon. Jay C. Gandhi
U.S. Magistrate Judge

EXHIBIT A

LIMITED SPECIAL APPEARANCE AND AGREEMENT
FOR ACCESS TO CONFIDENTIAL DOCUMENTS AND INFORMATION

I hereby acknowledge and affirm that I have read the terms and conditions of the Protective Order entered by the Court in the above-captioned Proceeding on the _____ day of _____. I understand the terms of the Court's Order and under oath consent to be bound by the terms of the Court's Order as a condition to being provided access to confidential documents and information furnished by _____. By executing this Agreement, I hereby consent to the jurisdiction of the above-captioned Court for the special and limited purpose of enforcing the terms of the Court's Protective Order.

I hereby declare under the penalty of perjury under the laws of the United States of America that the above statements are true and correct.

Dated: _____

By: _____

Name: _____

Title: _____

Affiliation: _____

Address: _____